

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH  
AT HYDERABAD**

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF OCTOBER  
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE DR JUSTICE G.YETHIRAJULU**

**WRIT PETITION NO : 17540 of 2004**

Between:

Sri V. Durgapathi Naidu, S/o. Bhaskar Naidu,  
R/o. H.No. 113/8-2, Rayala Nagar, Rayala Cheruvu Road, Thirupathi.

**..... PETITIONER**

AND

- 1 Deputy Registrar of Cooperative Society, Chittoor.
- 2 The Person-in-Charge/Chairman Puthalapattu PACS, Puthalapattu, Chittoor.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or Order more particularly one in the nature of Writ of Mandamus declaring the proceedings dated 29-2-2004 of the 1st Respondent and consequential proceedings dated 14-7-2004 and declare the same as arbitrary, illegal and violative of principles of Natural Justice and also against the Articles 14, 16 and 21 of the constitution of India.

**Counsel for the Petitioner:MR.V.S.K.RAMA RAO**

**Counsel for the Respondent No.: GP FOR COOPERATION**

The court at the stage of admission made the following **ORDER**:

The petitioner is a paid Secretary of the second respondent-Society. An enquiry under Section 51 of the Act was conducted against the affairs of the Society through the proceedings dated 05-05-2003 and the Enquiry Officer submitted his report on

30-01-2004. The petitioner contends that before issuing the notice under Section 60(1), an enquiry has to be conducted and he should be given sufficient opportunity to participate in the enquiry and after conclusion of the enquiry only, the first respondent is entitled to pass an order for surcharge. The further contention of the petitioner is that the second respondent got his salary attached for an amount of Rs.15,400/- and he was not paid salary from March, 2004 till date. He further contends that the second respondent is not allowing him to function as Secretary in the Society and is directing him to handover the records and account books. The petitioner therefore approached this Court seeking to declare that the proceedings of the first respondent by way of a show cause notice dated 29-02-2004 directing him to pay Rs.2,05,709-05ps, Rs.50,703-00 and Rs.2,700-00 etc., and the consequential proceedings dated 14-07-2004 as illegal, arbitrary and violative of principles of natural justice.

The first respondent ordered an enquiry under Section 51 of the Act regarding the affairs of the Society. The Enquiry Officer after conclusion of the enquiry noticed certain irregularities in the affairs of the society and further mentioned that the petitioner and others caused loss to the Society to various amounts mentioned in the report. On the basis of the said report, the first respondent without conducting further enquiry as required under Section 60 of the Act, issued a show cause notice dated 14-07-2004 under Rule 52, Cl.6, as to why his salary should not be attached towards realisation of the amount.

The learned Counsel for the respondent represented that an enquiry into the affairs of the Society was conducted under Section 51 of the Act and all the relevant witnesses were examined and records were verified, and during the said enquiry, it is identified that the petitioner and others caused loss to the Society, therefore, the question of conducting any further enquiry under Section 60 of the Act does not arise and if there is any such enquiry, it amounts to repetition of the enquiry already conducted under Section 51 of the Act.

The enquiry conducted under Section 51 of the Act is regarding the affairs of the Society. While probing into the affairs of the society, the Enquiry Officer noticed that the petitioner and others caused loss to the Society. In the light of the said report, the respondent ought to have caused further enquiry against the respective individuals including the petitioner, whether each of them is personally responsible for causing loss to the Society and whether the said amount is liable to be recovered

from the respective persons before passing order for recovery of the said amount. Since no enquiry has been conducted as contemplated under Section 60 of the Act which mandates any enquiry under Section 51 of the Act, if it appears that any person has misappropriated the money of the Society or is guilty of the breach of trust, the Registrar himself or any person specially authorized by him may inquire into the conduct of such person and make an order requiring him to repay the money with interest. It is further provided in Section 60(1) that no order shall be passed against any person referred to in the sub section unless the person concerned has been given an opportunity of making his representation.

In the light of the above provision, there is no mention in the order of the first respondent dated 29-02-2004 whether any such opportunity as required under Section 60(1) was given to the petitioner by conducting an enquiry. The first respondent passed the said order under Section 60(1) issuing a show cause notice to the petitioner and after receiving the explanation from the petitioner, no further enquiry was conducted before issuing the surcharge notice under Section 60(1), therefore, the order of the first respondent dated 14-07-2004 is liable to be set aside.

The first respondent is directed to follow the procedure prescribed under Section 60(1) of the Act; conduct an enquiry in pursuance of the enquiry report received by him under Section 50(1) of the Act, give an opportunity to the petitioner in the said enquiry and pass appropriate orders after conclusion of the said enquiry and take further steps according to the existing rules, if he comes to a conclusion that the petitioner is liable to pay the amount mentioned therein.

The Writ Petition is accordingly disposed of. No order as to

costs.

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Dr. G. Yethirajulu, J.

Dt:4<sup>th</sup> October, 2004.

Rns.

To

- 1 Deputy Registrar of Cooperative Society, Chittoor.
- 2 The Person-in-Charge/Chairman Puthalapattu PACS,  
Puthalapattu, Chittoor.
3. Two CCs to G.P.for Cooperation, High Court  
of A .P.,Hyderabad.(OUT),
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